



**Benton County  
WATER CONSERVANCY BOARD**

BENT-06-03

**Record of Decision**

Applicant: St. Michelle Wine Estates.

Application Number: CG4-GWC5494-A

This record of decision was made at an open public meeting of the Benton County Water Conservancy Board held on October 31, 2006, with any changes to ROE/ROD based on information received from the applicant and WADOE staff.

**(X) Approval:**

The Benton County Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination and submits this record of decision and report of examination to the Department of Ecology for final review or consideration.

**( ) Denial:**

The Benton County Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination and submits this record of decision to the Department of Ecology for final review or consideration.

Signed:

Signed [Signature] Date: 10/31/2006  
Darryll Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

Approves

Denies  
Recuse  
Abstains  
Excused Absence

Signed [Signature] Date: 10/31/2006  
John Jaksch, Ph.D., Vice Chairman  
Benton County Water Conservancy Board

Approves

Denies  
Recuse  
Abstains  
Excused Absence

Date: 10/31/2006  
Matt Berg, Treasurer  
Benton County Water Conservancy Board

Approves  
Denies  
Recuse  
Abstains

Excused Absence

Final ROE/ROD Mailed to the Department of Ecology, Regional Office of Ecology, via tracked mail, and other interested parties on or before 11/10/2006.

# BENTON COUNTY WATER CONSERVANCY BOARD

## Application/Review for Change/Transfer

OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF  
THE STATE OF WASHINGTON

## Report of Examination

☐ Surface Water ☒ Ground Water

DATE APPLICATION RECEIVED April 2006	WATER RIGHT DOCUMENT NUMBER CG4-GWC5494-A	WATER RIGHT PRIORITY DATE August 9, 1973	BOARD-ASSIGNED CHANGE APPLICATION NUMBER BENT-06-03- CG4- GWC5494-A
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NAME

St. Michelle Wine Estates

ADDRESS (STREET)

Columbia Crest D., P.O. Box 231

(CITY)

Paterson

(STATE)

WA

(ZIP CODE)

99345

Changes Proposed:

☐ Change purpose

☐ Add purpose

☐ Add irrigated acres

☐ Change point of diversion/withdrawal

☒ Other (Temporary, Trust, Interties, etc.) Add place of use and irrigated acres

### SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt Not exempt

Change request is below SEPA threshold (that portion of the gpm affected by change to place of use, including affected gpm from project related water rights is under SEPA threshold); including multiple (associated) water rights as a project configuration.

## BACKGROUND AND DECISION SUMMARY

### Existing Right

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
	2,000	960	Irrigation of 240 acres, April 1 to October 31.				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
Groundwater							
AT A POINT LOCATED:							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N.	RANGE	WRIA	COUNTY.
Well No 1	NW	SW	27	13N	24 EWM		Benton
All Within							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							

All within:

NW1/4 of Section 27, and NE1/4 of Section 34, T.13N, R. 24 EWM

And as described within existing certificate.

### Proposed Use

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
	2,000	389	Irrigation of 318.8 acres, April 1 to October 31.				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
Groundwater							
AT A POINT LOCATED:							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N	RANGE	WRIA	COUNTY
Well No.1	NW	SW	27	13N	24 EWM		Benton
All Within							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							

All within:

NW1/4 of Section 27, and NE1/4 of Section 34, T.13N, R. 24 EWM

And as described within existing certificate.

And:

All of Section 27, and SE1/4 and SW1/4 of Section 28, and NE1/4 of Section 33, and NW1/4 and NE1/4 of Section 34, T.13N, R.24 EWM.

### Water Board Decision

MAXIMUM CUB FT/ SECOND	MAXIMUM GAL/MINUTE	MAXIMUM ACRE-FT/YR	TYPE OF USE, PERIOD OF USE				
	2,000	420.9	Irrigation of 345 acres, April 1 to October 31.				
SOURCE			TRIBUTARY OF (IF SURFACE WATER)				
Groundwater							
AT A POINT LOCATED:							
PARCEL NO.	¼	¼	SECTION	TOWNSHIP N	RANGE	WRIA	COUNTY
Well No.1	NW	SW	27	13N	24 EWM		Benton
All Within							
LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED							

All within:

NW1/4 of Section 27, and NE1/4 of Section 34, T.13N, R. 24 EWM; and as described within existing certificate.

And:

All of Section 27, and SE1/4 and SW1/4 of Section 28, and NE1/4 of Section 33, and NW1/4 and NE1/4 of Section 34, T.13N, R.24 EWM.

Added Parcels:

1-2734-100-0003-000

1-2734-300-0000-000

1-2734-400-0000-000

1-2834-100-0000-000

1-2834-100-0000-000

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**DESCRIPTION OF PROPOSED WORKS**

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The existing certificate is being used to serve irrigation water supply needs for high-value wine grape production. The applicant seeks to increase the place of use for irrigated acreages, consistent with crop needs and demonstrated beneficial use, and to recalibrate its water rights to reflect allowed water usage per joint water rights for the area. The applicant is not expanding existing beneficial use, nor changing purpose of use or points of diversion.

The requested added place of use for this ROE/ROD will allow for additional flexibility in the use of water rights, while recalibrating the water right(s) to reflect existing beneficial use, within an allowed service area.

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**DEVELOPMENT SCHEDULE**

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BEGIN PROJECT BY THIS DATE: Immediately	COMPLETE PROJECT BY THIS DATE: By January 1, 2010	COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE: By January 1, 2011
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NOTE: The Water Board establishes the development schedule, as required under RCW 90.80.070, 90.80.080, and WAC 173-153-130. The schedule may be extended by WADOE if diligence is demonstrated in the completion of this project.

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## REPORT OF EXAMINATION

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### **BACKGROUND**

Note: Water right change/transfer review for water rights CG3-21610C, CG4-GWC5494-A, and CG4-GWC-5458-A are viewed as a joint project configuration, per the applications submittal to the Water Board.

The existing water rights are in good standing and are being used to irrigate high-value wine grapes

Change/transfer applications for water rights CG3-21610C, CG4-GWC5494-A, and CG4-GWC-5458-A were received and accepted by the Water Board in April 2006. These applications each request adding additional acreage—same place of use—to the water rights, subject to historical beneficial use requirements, with no change to points of withdrawal, purpose of use, or period of use. The applicant seeks greater flexibility in the use of the water rights, to optimize the use of each right across multiple grape production acreage plots.

The applicant's intent is to continue joint use of CG3-21610C, CG4-GWC5494-A, and CG4-GWC-5458-A at their existing places of use, with an added (same) place of use attached to each water right. Per the Water Board's beneficial use review, the total quantity of the allowed water use has been reduced from the original certificate.

#### *Attributes of the water right as currently documented:*

Name on certificate, claim, permit: St. Michelle Wine Estates

Water right document number: CG4-GWC5494-A

As modified by certificate of change number: BENT-06-03-CG4-GWC5494-A

Priority date, first use: August 9, 1973

Water quantities: Qi: 2,000 gpm Qa: 960 acre-ft./year

Source: Groundwater

Point of diversion/withdrawal: See above and attachments

Purpose of use: Irrigation, 240 acres

Period of use: April 1 to October 31

Place of use: See above and attachment

Existing provisions: See attached certificate and above.

#### *Tentative determination of the water right:*

See Water Board's Decision Above; water right is in certificate stage being used by the applicant.

#### *History of water use:*

The certificate is being used in conjunction with other water rights to irrigate high-value wine grape acreages.

#### *Previous changes:*

NA

#### *SEPA:*

As noted above, the water right change request is under the authorized SEPA review threshold, including at the "project" level

## **COMMENT AND PROTESTS**

Public notifications for the applicant's request were filed in the Tri-City Herald. A copy is provided in the Public Notice attachments. The WADOE/Water Board did not receive a protest notice, or comments, from a third party.

The application has been distributed to several state resources agencies, tribes, and interested parties. No comments have been received from these parties concerning the application.

### *Issues Raised by WADOE:*

The Water Board has provided the WADOE CRO with the change/transfer application and public notice, and a Water Board representative has met directly with WADOE staff, and requested an explicit identification of any issues of concern related to the change request or the Water Board's preparation of the ROE/ROD

In collaboration with the WADOE staff, the Water Board reviewed the applicant's historical beneficial use data, and has made adjustments to the applicant's request per extensive technical and field examinations.

### *Protests:*

Date: None Received.

This was recognized by the board as a ☐ Protest ☐ Comment

Name/address of protestor/commenter:

Issue:

Board's analysis:

*Other:*

## **INVESTIGATION**

The following information was obtained from a site inspection, technical reports and documents, research of department records, and discussions with the applicant's technical consultants and other interested parties

### *Proposed project plans and specifications:*

As noted above, the applicant will continue to use this water right to service irrigation requirements at the current place of use, with an added place of use, but with a reduction to the authorized water volume. The proposed use will rely on existing points of withdrawal, with no change to purpose of timing of use.

### **A. Key Technical Issues—Water Right Review:**

*This investigation has included several issues:*

### *Tentative Determination:*

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report. There are several circumstances that can cause the board's tentative determination to differ from the stated extent of

the water right within water right documentation. Water right documents attempt to define a maximum limitation to a water right, rather than the actual extent to which a water right has been developed and maintained through historic beneficial use. Additionally, except for a sufficient cause pursuant to RCW 90.14.140, water rights, in whole or in part, not put to a beneficial use for five consecutive years since 1967 may be subject to relinquishment under Chapter 90.14.130 through 90.14.180 RCW. Water rights may additionally be lost through abandonment. The Board's tentative determination was based upon the following findings

First, the water right applicant holds a valid water right certificate in good standing, and it is on file with the WADOE.

The certificate is valid as stands, subject to subsequent change actions by the Water Board and any WADOE administrative changes affecting development.

Second, under the change request, the total amount of water withdrawal from the existing and proposed well(s) cannot exceed the amount within the certificated water right. The change/transfer request must not exceed the existing water right limits; no enlargement of the water right is allowed.

The Water Board notes that this request requires no expansion of the water right, as designated under the existing certificate. The applicant is actively using the water, taking into account development along with other water rights, and the change request would not affect other water rights owned by the applicant.

The Water Board has determined that the full amount of the said water right available for change/transfer is presented within the above "Water Board Decision" summary, and should be the amount not exceeded by the applicant within the proof of appropriation filing and within the final superseding certificate issued by WADOE. The applicant's request for a change to added place of use is consistent with the state water code and case law. The change involves an added place of use, with an actual reduction in the allowed quantity of use, relative to the existing certificate.

And third, the Water Board has reviewed in full the applicant's detailed data for measured water use within the existing irrigation grape plots, and the analyses of beneficial use and the application of water-use efficiencies to calculate beneficial (consumptive) use available for change/transfer under RCW 90.03.380 (see attachments). This evaluation has included consultations with the applicant and consultants, consultations with WADOE technical staff, soil conservation district staff, and actual field investigations measuring the amount of empirically perceptible return flows from the existing irrigation sites (see attachment). The Water Board also has reviewed these data and information relative to the methodologies developed by the Water Board and WADOE to calculate beneficial use (ACQ) available for change/transfer under RCW 90.03.380 (two-year peak average over five years) (see Benton-Franklin County Water Boards' methodology and review of WADOE methodology attached).

From this review, the Water Board has determined that: 1) the applicant's data for and estimate of existing water use is accurate and acceptable for determining historical water use and allowable ACQ for change/transfer under RCW 90.03.380; 2) the applicant has demonstrated how existing and future water uses are changing, and that new application rates (crop duties and deficit irrigation practices) are acceptable for the proposed change to place of use; and 3) the applicant's original estimate of allowable water use for change/transfer should be modified to take into account empirical data/field observations indicating that no measurable return flows can be verified under existing irrigation conditions, thus affecting the total water amount eligible for change/transfer.

The Water Board's determination for allowed water use available for change transfer, for each water right, is stated in the above "Water Board Decision" section, and the attached Water Board Summary Review table. The Water Board notes that although additional irrigated acres are being added to the original certificate(s), the quantity of water allowed for future use—relative to the certificate(s)—is being significantly reduced. The increase in acreage reflects the required crop duty for wine grapes in the area, and the applicant's adoption of highly water efficient practices (representing a future applied water duty of approximately 1.22 acre-ft./acre).

**Water Board Summary Review:  
St. Michelle-Cold Creek Water Right Changes/Transfer**

Certificate G3-21610C				Acreage Change/Transfer Net Affected GPM	477
Authorized Use: Existing Acres	Authorized Use: Existing Acre-Ft.	Authorized Use: GPM			
200	345.26	1,150			
Added Acres @ 1.22 acre-ft.	83				
Total Acres:	283				
Certificate 5494-A				Acreage Change/Transfer Net Affected GPM	604
Authorized Use: Existing Acres	Authorized Use: Existing Acre-Ft.	Authorized Use: GPM			
240	420.9	2,000			
Added Acres @ 1.22 acre-ft.	105				
Total Acres:	345				
Certificate 5458-A				Acreage Change/Transfer Net Affected GPM	477
Authorized Use: Existing Acres	Authorized Use: Existing Acre-Ft.	Authorized Use: GPM			
200	345.26	1,500			
Added Acres @ 1.22 acre-ft.	83				
Total Acres:	283				
All Water Rights Combined				Net Acreage Change/Transfer Net Affected GPM	1,558
Authorized Use: Existing Acres	Authorized Use: Existing Acre-Ft.	Authorized Use: GPM	Existing Metered Est. Acre-Ft. Ave. (2001 & 2005)		
640	1,112	4,650	1,112		
			Initial ACQ Equation Est. Acre-Ft. Ave. (2001 & 2005)		
			1,034 (1,112@.93%)		
			Per Acre Use @850 Acres		
Total Incremental Acres Added	271				
Total Acres:	911		1111.42	1.22	
					14.64 Inches/acre



### *Hydrologic, and other technical investigations:*

First, based on a technical review of the applicant's submittal, and discussions with the applicant's technical consultants, it is concluded that the requested change/transfer will withdrawal water from the same body of water (and management area) as that allowed under the existing water right(s). There is no change to added point(s) of withdrawal.

Second, the water right change/transfer cannot create impairment. The Water Board has reviewed potential impairment problems and concludes that impairment is not an issue for the added point of withdrawal.

Further, it is noted and concluded from existing WA State water law, WADOE water right data, the applicant's technical information, and recent discussions with WADOE hydrology staff, that:

1) Impairment means that other water right holders are unable to use their water rights (whole or in part), given reasonable pumping lift with the construction of qualifying diversion works

2) Based on the public notice of this change request, the Water Board has received no impairment issue comments from other existing water right holders, including those who withdraw water from sites close to the applicant's existing/proposed well sites

The Water Board concludes that the proposed action will not create impairment to other water rights per the provisions and conditions established under the existing superseding permit and the conditions provided within this ROE/ROD; impairment is not an issue for the specific action related to this water right change

### **B. Water Right Adjudication Process:**

Water right adjudication does not affect this application.

### **C. Verification of Existing Water Right:**

As noted above, the existing water use retains a certificate of water right granted by the Washington State Dept. of Ecology. The Water Board has reviewed the water right documentation, reviewed the applicant's technical information concerning the water right, is familiar with the existing water use and land operations, and has conducted its own review of the water right relative to change/transfer conditions as discussed above. It is concluded that the water right is in good standing, and subject to the conditions contained within this ROE/ROD for change/transfer.

### **D. Field Examination:**

The field examination was conducted by Dr. Darryll Olsen, Chairman, BCWCB, and Mr. Mark Nielson, District Manager, Franklin Conservation District, with on-site visits in August 2006 (with the applicant). Further, the Water Board is familiar with this area having reviewed other related applications and previously toured the area with the applicant(s).

The field examination confirmed the information within the application request and technical information, which is more fully elaborated upon in this Report of Examination.

The field examination consisted of viewing the existing/proposed water use sites, existing pumping sites, and the surrounding area; and collecting soil moisture data, and making soil moisture probe observations. A visual examination of the site water use area was conducted, along with a review of the applicant's maps. In essence, the field investigations confirmed information provided by the applicant through personal communications and supporting application materials.

#### **E. Technical Information, Investigations, or Reports Reviewed:**

The Water Board has reviewed the applicant's WADOE file and records contained therein, including any reports/comments submitted by WADOE staff, and pertinent WADOE water right records.

The applicant has provided technical information, personal communications, and technical references requested by the Water Board, including data to verify the existing and proposed use areas; and the applicant has communicated extensively with individual Water Board members to answer specific questions about the change/transfer request. The Water Board has conducted a field examination to verify the information contained within the applicant's current water rights and supporting technical information. The Water Board has requested and received supplemental information from the applicant and has discussed future water usage needs with the applicant.

The Water Board has reviewed the standing of the water right, documentation provided by the water right holder concerning land holdings and management, and aerial photography for the existing and proposed water right place of use.

The Water Board has forwarded copies of the application change/transfer request and public notice to the state Dept. of Fish & Wildlife, the Dept. of Health, the tribes, and to all parties requesting such copies. No comments were received by these parties during the formal public comment period for the change/transfer application.

The Water Board has required and reviewed the applicant's SEPA compliance needs.

#### **F. Associated Rights and Uses:**

The subject certificate(s) is being used by St. Michelle Wine Estates, along with other water rights in the general area.

The three existing water rights named above are being used jointly to cover the "project" irrigation plots; they will be used to cover adequately the water supply needs for the requested place of use.

The Water Board has identified nearby water rights adjacent to the existing and proposed place of use, as indicated within the WRATS database; and identified nearby wells, as indicated on the WADOE website.

#### **G. Review of Potential Impairment:**

Because the proposed action will not increase the existing certificated water use (with change modifications), or increase the water amount put to allowed beneficial use, or likely affect other existing water rights (or applications for new water rights), no impairment is perceptible. The applicant's technical information has been reviewed on water use within the same body of water for management purposes and potential impairment.

The proposed change/transfer will be beneficial in the conservation and management of water resources from existing practices for the following reasons: 1) there will be no increase in withdrawal on an annual/seasonal basis after the change/transfer, compared to existing permitted withdrawals; and 2) better controls and monitoring on the quantity of water pumped will help ensure that the authorized quantity is not exceeded, as required under a metering and irrigation development plan.

The Water Board has published public notice of the proposed action and reviewed any potential technical issues concerning impairment.

Existing water rights located within the nearby area--within the same section and adjacent sections--were noted according to information contained within the WADOE WRATS data base system and visual inspection, and ongoing Water Board review within this area.

As noted above based on the applicant's technical information and the Water Board's review, it is concluded that no impairment would occur related to the water right change/transfer request.

The field investigation revealed that the applicant's request for change/transfer is consistent with existing land and water use practices within the immediate area, reflecting the development of and consistency with the Benton County Comprehensive Land Use Plan.

The change/transfer request is consistent with net beneficial use and return flow considerations contained in RCW 90.03.380 and other applicable statutes. The change will not increase water withdrawals or net depletions from the groundwater source. More specifically, the subject application for change is consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, and to provide greater operational control to water managers.

Given the fact that no increase in water withdrawal from the existing groundwater management source will occur relative to that allowed for beneficial use, there is no reason to expect any impairments to other water sources, consistent with the conditions and provisions provided under the existing water right modification order granted by the WADOE. Also, because the change/transfer proposed by the applicant does not affect withdrawals from new water sources or increase existing allowed net withdrawals/diversions from that currently permitted, the change/transfer request does not affect local conditions surrounding the status quo for water use, as permitted by WADOE.

This application decision has no impact on WADOE's existing water right decisions, the condition of local surface water or groundwater resources based on empirical data, or the priority for water rights between junior and senior water right holders within the local area. The Water Board does include conditions within this ROE to ensure that the public interest affecting water use is protected, and that they are consistent with actions that would be pursued by WADOE to avoid future or potential impairment problems or regulation actions.

#### **H. Effect or Benefit to Public Interest:**

A recent Washington State Supreme Court ruling has stated that "...a 'public interest' test is not a proper consideration when Ecology acts on a change application under RCW 90.03.380." PUD No. 1 of Pend Oreille County v. Dep't of Ecology, 70372-8 (2002). By extension, neither does the Water Board have authority to apply a public interest test when evaluating a change in water right request under RCW 90.03.380. But the Water Board's legal counsel has indicated that the above court case is in reference to surface water changes/transfers, and groundwater-serviced water right changes/transfers are subject to public interest consideration under the purview and scope of the groundwater code.

The Water Board concludes that the requested change/transfer is not contrary to the public interest governing water use. To the extent review of public interest is applicable, the Water Board finds that the application for change are consistent with public policy objectives of the state to provide for efficient use of water resources, to encourage supply of new or expanding uses through change/transfer of existing water rights, to provide greater operational control to water managers, and to ensure no impairment exists.

Because the proposed action will not increase the existing certificated water use, or increase the water put to actual beneficial use, or result in a measurable impact on other existing water rights or applications for new water rights, it does not change the existing status quo for water use impacts. Thus, no impairment is perceived, because of the change/transfer requested in the application. Water use is provided consistent with statutory requirements for beneficial use.

The proposed action does provide for a continuation of the existing beneficial use as stated within the certificate(s) of water right, increasing the economic benefits to the state and local area by allowing for continued use and development of irrigated lands. The development is taking place in the land-use management area of Benton County.

This action is consistent with the intent of RCW 90.03.380, 90.44.100, and 90.80 (amended May 10, 2001) and other applicable statutes; and it is consistent with Benton County's Comprehensive Land-Use Plan. No impairment is consistent with the public interest; all pertinent water right issues are addressed above; conditions are recommended within this ROE to further protect the public interest consistent with state water law.

The application for change/transfer is consistent with the public interest requirements for beneficial water use, and consistent with the procedural, technical, and legal review requirements by the state.

#### **I. Consideration of Pending Applications:**

The applicant's request will not affect the priority for action on pending new water rights or change/transfer applications filed with the Washington State Department of Ecology, for Benton County. Existing applications for Benton County were noted (WADOE data base); and no infringement on priority for action for these applications is perceived by (WADOE or the Water Board).

This application review also is consistent with legislative changes made in 2001 affecting the processing of change/transfer applications by the WADOE, as well as the amendments made to RCW 90.03.380.

Public notice has been provided for requesting all water right holders within the Benton County to submit existing or new water right change/transfer applications to the Benton County Water Board—or the WADOE. Applications received by the WADOE or Water Board are first reviewed for accuracy, completeness, and purpose to ensure they fall within the purview of the agency's and Board's jurisdiction. Those that are found wanting are referred back to the applicant for re-submittal or withdrawal. The remaining ones are acted on by a first-come, first-serve basis, taking into account received application's priority date and the technical/legal review requirements thereof.

#### **FINDINGS AND CONCLUSIONS**

1. The certificate(s) of water right and existing development and beneficial use are verified.
2. The proposed change/transfer will result in no increase in the annual quantity of water authorized and is consistent with the requirements of RCW 90.03.380 and the groundwater code. The change/transfer request will not increase the certificated water right; the change/transfer will not increase allowed consumptive use from the designated sources per RCW 90.03.380 standards.
3. There will be no increase in water withdrawal on an annual or seasonal basis. In addition, continued monitoring of the quantity of water pumped will help ensure that authorized water withdrawals are not exceeded, for the changes granted.
4. The Water Board has determined that impairment is not an issue affecting this change request.
5. Public notice has been provided for the proposed action, and any public concerns have been reviewed by the Water Board. Public notice and application submittal has been forwarded to several state resource agencies/tribes/interested parties for comment; the agencies have provided no direct comments to the application.
6. The WADOE has been consulted on the Water Board's review/determination of the available ACQ available for change/transfer (allowed under RCW 90.03.380 for change/transfer) and concurred with the Water Board's evaluation and determination.

7. The applicant has complied with SEPA review.
8. The proposed action creates no perceived detrimental impacts or impairments to other water right holders or permit applicants; adequate data and information exists to make this determination with confidence.
9. No protests have been made by third parties on this application.
10. The proposed action is consistent with the intent of RCW 90.03.380, 90.44.100, and 90.80 (as amended May 10, 2001) and recent case reviews by the Washington State Supreme Court.
11. The proposed action supports the public interest concerned with the direct use of water rights, is consistent with allowed beneficial uses, and is consistent with local area economic development needs and land uses.
12. The Water Board has provided for specific conditions and provisions affecting the use of the water right, as identified below.

### **RECOMMENDED PROVISIONS**

#### **A. Provisions:**

The applicant's water right change for added place of use is conditioned by the following provisions:

1. The place of use for the water right is designated in the summary table above (under Water Board Decision); an added place of use is granted.
2. The point(s) of withdrawal are designated in the summary table above (under Water Board Decision).
3. Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices, taking into account cost-effectiveness for operations and economic viability.
4. The existing change and final certificate for CG4-GWC5494-A shall not exceed 2,000 gpm, 420.9 acre-ft, for irrigation use, April 1 to October 31, for irrigation of 345 acres.
5. By January 1, 2010, the applicant will notify the Water Resources Program, Central Region Office, WADOE, that project construction is completed, unless further extended for good cause.
6. Proof of appropriation (for actual beneficial use of water) is due to the Water Resources Program, Central Region Office, WADOE by January 1, 2011, unless further extended for good cause.
7. The WADOE shall undertake a proof inspection to certify actual development of the water right amended within this ROE.
8. The applicant will provide the WADOE with a metering plan, for the existing and added place of use, prior to water use within the additional place of use, consistent with the provisions of this change decisions and existing change decisions and modification orders. The metering plan will include a process for allocating water use to water rights CG3-21610C, CG4-GWC-5458-A, and CG4-GWC5494-A, taking into account points of withdrawal and joint place of use.

9. An approved measuring device(s) shall be installed and maintained for the sources (all points of withdrawal) identified herein in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly and shall be submitted annually to Ecology by January 31st of each calendar year typically, and per the stipulations of the submitted metering plan.

10. The rule above describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed or available from Ecology as a document entitled "Water Measurement Device Installation and Operation Requirements."

11. At a minimum, the following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit or Certificate No., source name, annual quantity used including units, maximum rate of diversion including units, period of use, weekly meter readings including units, and peak flow including units for each month. In the future, Ecology may require additional parameters to be reported or more frequent reporting.

12. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

13. Department of Ecology personnel, upon presentation of proper credentials and prior notification, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions, but only to the extent otherwise allowed by law.

**B. Mitigation Requirements:**

None.

## DECISION

### Approvals:

The Benton County Water Conservancy Board hereby APPROVES the water right change/transfer described within this record of examination and record of decision, and submits this certificate for conditional approval to the Director of the Washington State Department of Ecology. If the Director takes no action within forty-five days of receipt of this ROE/ROD, then the Water Board's decision, as written, is final

Approved Unanimously by the BCWCB  
Kennewick, Washington  
This 31<sup>st</sup> day of October 2006

Approved and Signed on Behalf of the Water Board By:

Signed \_\_\_\_\_



Darryll Olsen, Ph.D., Chairman  
Benton County Water Conservancy Board

Date Mailed to WADOE Director: on or before 11/10/2006

**For attachments not included or for more information please contact:**

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